

REMARKS

The Applicant has carefully considered this application in connection with the Examiner's Action and respectfully request reconsideration of this application in view of the foregoing amendments and the following remarks.

The Applicant originally submitted Claims 1-11 in the application. Claims 1, 3, 4, 5, 7, 10 and 11 are amended herein to, among other things, remove inadvertent errors in the respective claims. The Applicant has also amended the specification to incorporate reference numerals inadvertently omitted therefrom and has attached a replacement drawing sheet to incorporate a reference numeral 16 for the friction wheel also inadvertently omitted from Figure 1 (now designated Figures 1A and 1B). No new matter has been added to the application. Accordingly, Claims 1-11 are currently pending in the application.

I. Rejection of Claims under 35 U.S.C. §102

The Examiner has rejected Claims 1-9 and 11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,724,667 to Furuno. As the Examiner is no doubt aware, anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference; the disclosed elements must either be disclosed expressly or inherently and must be arranged as in the rejected claims.

The Examiner asserts that Furuno teaches all of the elements of independent Claims 1, 3 and 5 of the present application. More specifically, the Examiner asserts that Furuno discloses a method of deploying and retracting an ear piece attached to a mobile phone including the steps as

recited in Claims 1 and 3. The Examiner also asserts that Furuno discloses a mobile communications device including an attachment device and a mobile phone as recited in Claim 5. (Examiner's Action, pp. 2-3.) The Examiner continues, however, that Furuno does not disclose a friction wheel for deploying and retracting the earpiece. (Examiner's Action, p. 4,)

In accordance therewith and only to further prosecution of the present application, the Applicant has included a friction wheel for deploying and retracting an ear piece in independent Claims 1, 3 and 5. As a result, Furuno does not disclose each and every element of Claims 1, 3 and 5, and the claims dependent thereon and, as such, is not an anticipating reference. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §102 rejection in view of Furuno with respect to Claims 1-9 and 11.

II. Rejection of Claims under 35 U.S.C. §103

The Examiner has rejected Claim 10 under 35 U.S.C. §103(a) as being unpatentable over Furuno in view of U.S. Patent Publication No. 2001/0031644 to Eromaki. The Examiner asserts that Furuno teaches the mobile communications device as recited in Claim 5, and a voltage source and switch as recited in Claim 10. The Examiner then introduces Eromaki for the friction wheel as recited in Claim 10, conceding that Furuno does not disclose a friction wheel for deploying and retracting an ear piece. (Examiner's Action, pp. 3-4.)

As the Examiner is no doubt aware, according to 35 U.S.C. §103(c) subject matter developed by another that qualifies as prior art under subsections (e), (f) and (g) of §102, shall not preclude patentability under §103 where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of

assignment to the same person. In the instant case, the subject matter of the present application and Eromaki were subject to an obligation of assignment to the same person (Nokia Mobile Phones, Ltd.) at the time the claimed invention of the present application. For purposes of convenience, a copy of the executed assignment papers for the present application and Eromaki are attached hereto. As a result, Eromaki does not qualify as a prior art reference under 35 U.S.C. §103.

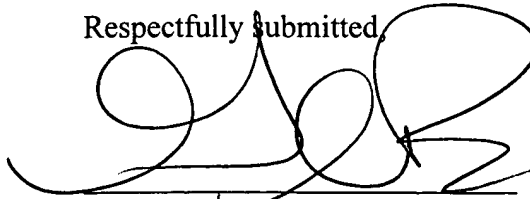
Accordingly and conceded by the Examiner, Furuno does not teach or suggest a friction wheel for deploying and retracting an ear piece as recited in Claim 10. Since Furuno fails to teach or suggest all of the elements of Claim 10, the Examiner cannot establish a *prima facie* case of obviousness therefor. In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claim 10 under 35 U.S.C. §103(a). In accordance therewith, the Applicant respectfully requests the Examiner withdraw the rejection with respect to Claim 10.

III. Conclusion

In view of the foregoing amendments and remarks, the Applicant now sees all of the claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-11.

The Applicant requests that the Examiner telephone the undersigned attorney of record at (972) 732-1001 if such would further expedite the prosecution of the present application. No fee is believed due in connection with this filing. However, should one be deemed due, the Commissioner is hereby authorized to charge Deposit Account No. 50-1065.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Glenn W. Boisbrun', written over a horizontal line.

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Date

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